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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7376 of 2006

Janardan M. Mhatre .. Petitioner

versus

Panvel Municipal Council & ors. .. Respondents

...

Mr.C.G. Gavnekar for the petitioner.

Mr.N.V. Walawalkar with Sudhir Prabha for respondent no.1.

Mr.S.B. Shetye i/b S.V. Gavad for respondent no.4.

Mr.C.R. Sonawane, AGP for respondent nos.2 and 3.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 29th September 2007

P.C.:

1. By this petition, the petitioner challenges the notice dated 2nd November 2006 issued by the respondent no.2 Collector for an enquiry as to whether he had incurred disqualification under section 44 of the Maharashtra (Municipal Councils), (Nagar Panchayats and Industrial Townships) Act 1965 (for short "the Municipalities Act").

2. The petitioner was elected as the President of the Panvel Municipal Council on 17th December 2001. An application was made by respondent no.4 to the Collector (the rerspondent no.2) alleging that the petitioner had incurred a disqualification for being a Councillor and therefore appropriate action be taken against him. On receipt of the application the respondent no.2 issued the impugned notice to the petitioner to show cause. Instead of appearing before the Collector and showing cause, the petitioner has directly approached this court for a direction to quash the impugned notice.

3. Mr.Gavnekar, learned counsel for the petitioner submitted that the President is not a Councillor as he is directly elected as the Presidents of the Municipal Council. Therefore, the Collector has no jurisdiction to determine whether petitioner had incurred a disqualification. In support of his submission, the learned counsel referred to and relies upon a judgement of the Division Bench of this Court in Rajan Ramnath Patil V/s. State of Maharashtra (Writ Petition 3449 of 2005) decided on 10th August 2005, Coram G.D.Patil and D.B. Bhosale, JJ)

4. Previously the President was to be directly elected by all the voters and was not to be elected from amongst the Councillors. However, section 5 of the Municipalities Act has been substituted by Maharashtra Act no.31 of 2006. Under the amended provision, the President is to be elected by the councillors from amongst themselves. This contemplates that the President has to be first a Councillor and one amongst the Councillors is to be elected as the President.

5. Thus, the basis of which the judgement rendered in the case of Rajan Patil (Supra) has been statutorily altered. Now the President has to be a Councillor. Ofcourse, the question whether the amendment applies to the petitioner in the facts and circumstances would be required to be adjudged by the Collector by holding an enquiry. At this stage, it cannot be said that the impugned notice, if ex-facie, is without jurisdiction. Determination of all the disputed issued including applicability of the amended provision is required to be made by the Collector. Ultimately, the Collector may hold that the petitioner is, or at the relevant time was, not a Councillor and as such he has no jurisdiction to

entertain it and so dismiss the application filed by respondent no.1. However, it cannot be held that the application of the respondent no.1, ex-facie, was liable to be dismissed as without jurisdiction.

6. In the circumstances, we see no merit in the Writ Petition which is hereby rejected. Interim relief, if any stands vacated.

7. Learned counsel for the petitioner prays for continuation of the interim relief for four weeks. We are not inclined to continue the interim relief as the term of the President has come to an end on 14th December 2006.

(D.G.KARNIK, J) (S.B. MHASE, J)